

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 19, 2009

MARK EDWARD HARRIS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Sullivan County
No. S46,841 R. Jerry Beck, Judge

No. E2008-01942-CCA-R3-HC - Filed June 12, 2009

The petitioner, Mark Edward Harris, appeals from the Sullivan County Criminal Court's denial of his "Motion to Correct Illegal Sentence," the substance of which is that the trial court, upon revocation of the petitioner's probation, failed to award him credit for time served in the court's revocation and confinement order. Because the trial court determined that it awarded the defendant credit for all time served, it dismissed the motion. We dismiss the appeal from the order of the criminal court.

Tenn. R. App. P. 3; Appeal Dismissed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ. joined.

Stephen M. Wallace, District Public Defender; Joe Harrison, Assistant Public Defender (at trial); and Mark Edward Harris, pro se (on appeal).

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Janine Myatt, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

From the sparse record before us, we discern that the trial court originally sentenced the petitioner in 2003 to a term of eight years as a Range II offender to be served via 364 days in confinement followed by probation for the balance of the sentence. In 2007, the trial court revoked the petitioner's probation, ordered him "to serve the sentence of 8 years, R[ange] II in the Tennessee Department of Correction," and awarded credit for the petitioner's serving the original 364 days as well as credit for serving 90 days while the revocation proceeding was pending.

In 2008, the petitioner moved the court to correct his sentence, which he characterized as illegal because the revocation order required him to serve in confinement the original eight-year

sentence in addition to the 364 days he previously served in split confinement. As we have revealed above, the petitioner is incorrect in this claim; the trial court's revocation order, as that court noted in his order denying the present motion, awarded him credits of 364 days and 90 days, respectively, for his split-confinement time served and his time in jail pending his revocation hearing.

That noted, we dismiss the appeal from the trial court's order summarily denying the motion.

Tennessee Rule of Appellate Procedure 3(b) does not authorize a direct appeal of a dismissal of a motion to correct an illegal sentence, the method of attack utilized by Moody. . . . [T]he proper procedure for challenging an illegal sentence at the trial level is through a petition for writ of habeas corpus, the grant or denial of which can then be appealed under the Rules of Appellate Procedure.

Moody v. State, 160 S.W.3d 512, 516 (Tenn. 2005). The underlying motion in the present case does not meet the mandatory statutory standards for a petition for writ of habeas corpus. *See id.*; *see also* T.C.A. §§ 29-21-101 through -130 (2006). Because the petitioner has no right of appeal in the matter, the appeal is dismissed.

JAMES CURWOOD WITT, JR., JUDGE